

TO preserve the strength of the Marriage-bond and the Honour of that estate, against those sad breaches and dangerous abuses of it, which common discontents (on this side Adultery) are likely to make in unstaied mindes and men given to change, by taking in or grounding themselves upon the opinion answered, and with good reason confuted in this Treatise, I have approved the printing and publishing of it.

Novemb. 14. 1644. JOSEPH CARYL

Errata.

IN pag. 1. line 17. read *aut* for *and*, p. 2. l. 29. r. *Kens case* for *Keras case*, p. 92. l. 9. r. *to* for *as*, p. 12. l. 24. leave out *naturall* in the first place, p. 14. l. ult. r. *Obligee* for *Obligor*.

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An Answer to a Book, Intituled,
THE
Doctrin and Discipline
OF
D I V O R C E,
O R,

A Plea for Ladies and Gentlewomen,
and all other Married Women
against Divorce.

Wherein,
Both Sexes are vindicated from all bonadge of Canon
Law, and other mistakes whatsoever : And the unsound Prin-
ciples of the Author are examined and fully confuted by
authority of Holy Scripture, the Laws of this Land,
and sound Reason.

Concil. Anglic. Anno 670. Can. 10.

*Nullus conjugem propriam nisi (ut sanctum Evangelium do-
cet,) fornicationis causa relinquat.*



L O N D O N,

Printed by G. M. for William Lee at the Turks-Head in Fleet-
street, next to the Miter Taverne. 1644.

An Answer to a Book, intitled

THE

Doctrine and Discipline

DIVORCE

A Plea for Ladies and Gentlewomen

and all other Married Women

against Divorce

Whence

Both Sexes are vindicated from all bondage of Canon

Law, and other unchristianish notions: And the unchristian

usage of the Author examined and fully confuted by

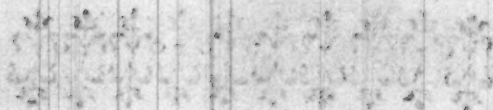
authority of Holy Scripture, the Law of this Land,

and sound Reason.

Concise Anglic. Anno 1700. Cap. 10.

Nullus conjugum proprium est (ut testatur Evangelium de-

cor.) fornicationis causa separatus.



LONDON

Printed by J. M. for William Lintell, the Printer in Fleet

Street, next to the Middle Temple, 1644.



I

An Answer to a Book, intituled,
*The Doctrine and Discipline of Divorce restored to the
good of both Sexes from the bondage of the
Canon Law.*



Or our more orderly proceeding in this question of Divorce, viz. whether a man may divorce or put away his Wife for indisposition, unfitness, or contrariety of minde, we will do these three things.

1. Shew what the Doctrine or discipline of Divorce is.

2. Give some reasons why a man may not put away his wife for indisposition, unfitness, or contrariety of minde, although manifested in much sharpness.

3. We will answer the Arguments and Scriptures, which are brought by the Author of the Book, intituled, *The Doctrine and Discipline of Divorce*, to prove that a divorce may lawfully be for contrariety of minds, &c.

Concerning the first thing, what Divorce is, or the Doctrine and discipline of it.

The word Divorce comes from the Latine word *divortium*, which comes a *divertendo* and *divortendo*, to intimate that by divorce a woman is separated, divided, or turned aside from her husband: the Greek is *αποπειρε* ex *αποπειρο*, i.e. *repudio*, *rectius αποσαςιον*, dicitur quod ab *απὸ*, i.e. ab *ἐ* *ισμι*, i.e. *sto*, quasi dicas *abscissio*. The Hebrew word is *Cberithuth* from *Chorath*, which signifies a cutting off, dismembring, or separating, or *foedus icere*;

B

but

but *Cherithuth* is *ἡ βλῖος διαζευξις*, properly a Bill of divorce or parting. Thus concerning the word.

Now concerning the divorce it selfe, to show what it is, we must consider it under a twofold notion.

First, as it hath been practised by the Jewes according as they thought directed by *Moses's Law*, and so Divorce was a free and a voluntary act of the Husband, made known by writing, whereby he did dismiss and for ever put away his Wife, and give her leave to marry to another man: To this purpose some of the Hebrew Rabbins have set down the form of the Bill of Divorce used amongst the Jewes: in effect thus.

I (such an one) (setting down his name, the day and year) do voluntarily, with the willingnesse of my soule without constraint, dismiss, leave, and put away, thou, even thou, (naming her name) which has been my wife heretofore, but now I dismiss thee, that thou maist be free, and be married to whom thou wilt: And this is unto thee a writing of divorce, according to the law of Moses. Witnesse R. and T.

The Jewes require to make a lawfull divorce, that the man must put her away willingly, that it must be by writing, that he must put her quite out of his possession, that she be truly named in the deed of divorce, and that the deed of divorce be given to her either by himself or his Deputy before witnesse.

Thus of Divorce as practised by the Jewes in relation to *Moses's Law*.

In the second place we will consider of it as practised by the lawes of England.

And so Divorce is a sentence pronounced by an Ecclesiasticall Judge, whereby a man and woman formerly married, are separated or parted. *Cook lib. 7. Keras case.*

This Divorce is twofold: 1. There is a divorce *a vinculo matrimonii* from the very bond of matrimony it selfe. 2. There is a divorce *tantum a mensa & thoro*, from bed and board only.

Concerning the first kinde of divorce from the very bond of matrimony it selfe: the cause of this divorce must preceede or go before mariage: amongst which are,

1. *Causa precontractus*, because the parties or one of them was contracted to another before: and so if a man marry one precontracted and have issue, its the fathers childe till divorce for precontract,

contract, and then is it *nullus filius*, a Bastard. *Cook lib. 6. 66.*
Dier 105.

2. There is a divorce *a vinculo matrimonii causa frigiditytis, vel causa impotentie*, for cause of impotency to marriage duties: yet if after a man be divorced for impotency, and take another wife and have children by her, these shall not be Bastards, because a man may be *habilis & inhabilis diversis temporibus*, able and unable at divers times. *Cook lib. 5. 93. Dier fol. 178.*

3. There is a divorce *a vinculo matrimonii causa minoris aetatis vel impubertatis*, because they are within age at the time of marriage: and so if two be married *infra aetatem*, and after full age are divorced for the same, the woman may bring an Assise against the man, for land given her in frank-marriage, *Lib. Ass. 19. An. plac. 2.* which proves the divorce is from the very bond of matrimony. Besides these there are divers other causes of divorce *a vinculo matrimonii*, as *causa affinitatis & causa consanguinitatis*, by reason of affinity and consanguinity or kindred, *Cook com. Littleton.*

So *causa professionis*, and *termino pasche 30 Edw. I. coram Rege*, there *William de Chodmorths* case, how that he was divorced from his Wife, because he carnally knew the Daughter of his Wife before he married her mother: these are causes of divorce from the very bond of matrimony allowed on by the Common law; concerning which the Civill or Canon law makes some distinctions and additions. So in the case of divorce *causa impotentie vel frigiditytis*, for impotency to marriage duties. Although *Justinian* (as some think discreetly) did will, that there should be three yeares triall of the disability: yet here the Canon law expects present prooffe: yet some think this cause doth not dissolve from the very bond of matrimony, except the impotency or impediment can be proved to be before marriage, and not to fall out after: So of impotency the same they say, *Ut per ea matrimonium nunquam extiterit iudicetur*. And concerning marriage of kindred in the line ascendant or descendant, it is counted so detestable, that *Bartel* sayes, they suffer confiscation of goods and deserve exile.

The Civill and Canon law allow of divorce after a long time absence of either party, but they certainly agree not of the time of absence. So *Cod. lib. 5. tit. 1. leg. 2. const. sponsa post biennium*,

&c. allowed to marry after two years absence, but *cir.* 27. after three years, *leg.* 27. after four years. Others say the Civill law requires five years absence.

In Consil. Lateran. part. 50. cap. 23. There is an example of a Decree, upon a woman complaining her husband had been gone ten yeares, and it was commanded the parents of the husband should send for him home, and he in a long time came not; upon which the Bishop did pronounce a sentence of divorce, and gave the woman leave to marry, and the sentence was allowed of by the whole Councell.

So the Canon law decrees *causa 28. quest. 1. cap. 4.* That if the wife refuse to dwell with her Christian husband, he may without any fault leave her.

Thus of the first kinde of divorce from the bond of matrimony it self, and this makes the children Bastards and bereaves the woman of her dower.

Secondly, there is a divorce *à mensa & thoro*, from bed and board only, and this is for some cause subsequent or during marriage, and not before marriage, as for adultery committed. Yet this being subsequent to the marriage, the bond of marriage by the law is not dissolved, but the freehold continues, the wife shall be indowed, and the children are mulier, and not Bastards.

Concerning the justnesse or conveniency of all these lawes in every thing, whether they will stand *in foro conscientie* its not needfull now to dispute: our end being only a little to open the law of Divorce, that we may see what it is. And so now we leave this first thing what Divorce is, and the doctrine and discipline thereof, and come to the second thing.

2 Thing

And that is to prove that whatsoever other causes of Divorce may be allowed of, yet that disagreement of minde or disposition between husband and wife, yea though it shewes it selfe in much sharpnesse each to other, is not by the law of God allowed of for a just cause of divorce, neither ought to be allowed of by the lawes of man.

For the proof of this second thing propounded to be handled, to prove that Husbands and Wives ought not to be divorced for contrariety or unfitnessse of mindes or dispositions, although it should be manifested by much harsh carriage each to other, I shall as briefly as I can demonstrate the same.

Where

Where the Scripture commands a thing to be done, it appoints when, how, and for what it shall be done: as in the case of death: when any one is by the law to dye, it sets down for what cause and fact: and so excommunication it teacheth when and for what. But now concerning Divorce for disagreement or contrariety of disposition, in regard there is between all married people some contrariety or disagreement of mindes: and the Scriptures speak nothing to direct to what a measure of disagreement or contrariety it must grow to, before it shall be lawfull to divorce or part: therefore I conclude the Scripture allowes not of any divorce at all for disagreement, &c. 1 Arg.

If it be not lawfull for a Husband to put away an Infidell wife who acknowledges not Christ, in case she be content to dwell with him: Then may not a man put away his wife for disagreement of mindes only: but the first is true, *ergo* the latter. 2 Arg.

For the first part of the Argument the Apostle saith, 1 Cor. 7. 13. *If any brother hath a wife who is an Infidell, if she be content to dwell with him; let him not put her away.*

And for the second part, that if a man may not put away his wife who is an Infidell, much lesse may he put his wife away for disagreement of disposition, this seems clear: because difference in religion in its own nature, breeds as great a dislike and disagreement and greater than any naturall disagreement of disposition, constitution, or complexion whatsoever. Christ speaking of this difference, even between them of the nearest relation, saith, *The father shall be against the sonne, and the sonne against the father, even to persecute with extremity: And that the Disciples should be hated of all for Christs sake:* and yet I never heard of any that was hated of every man for his contrariety of naturall disposition.

So that if disagreement in religion be a greater cause of hatred and variance then disagreement of naturall dispositions and constitutions; and yet a man may not put away his wife for that disagreement, then much lesse for this.

The third Argument shall be from *Dent. 22. 13, 14, 15, &c.* There if a man shall take a Wife and hate her, and raise an ill report upon her, to the end that he might be rid of her: and if the report be found true she shall be stoned to death; but if it be not found 3 Arg.

found true he shall not put her away all the dayes of his life: here although a man hates his Wife, so that he seeks by false reports to scandalize her, even to danger of her life, yet is not he permitted to put her away all the dayes of his life; and yet how great the disagreement of minde and disposition must of necessity be between such a man and his wife who so did hate her, let any man judge.

4 Arg.

If every Christian ought to beare the burthens and infirmities of another Christian, to whom he is not bound by any civill relation; much more is he to beare the burthen and infirmities of his Wife who is so neerly bound to him: but the first is true, *Gal. 6. 1.* Ergo the latter. But he that for infirmities or contrariety of minde, or the like, puts away his wife, doth not bear with her infirmities, and therefore he breaks the law of Christ.

5 Arg.

If the Husband ought to love his Wife, as Christ doth his Church, then ought not a man to put away his Wife for weakness of nature, contrariety, or indisposition of minde. But the first is true. Ergo the latter.

For the first part, the words of *Paul Ephes. 5. 29.* *Husbands love your wives as Christ doth his Church.*

If any shall say, Similitudes hold not in every thing, and therefore *Paul* may not mean a man should love his Wife in perpetuity as Christ doth his Church, but for the sincerity, so long as she continues his wife.

Ans. *Paul* specifies wherein they should expresse their loves like to Christ, at least implicitly: that is, by passing by and bealing the faults and infirmities of their Wives, as Christ gave himself, &c. that he might wash his Church, &c. And for the second part of the Argument its clear, because such love as is there required ought to hide and passe by faults, disagreement of minde, contrariety of disposition, &c.

6 Arg.

The sixth Argument is from the expresse words of Christ, *Marth. 5. 32.* where he being a preaching to his Disciples concerning the true sense of *Moses's* law (as it seemes) and of some addition thereto by his own Evangelicall precepts: he precisely tels them: *That whosoever puts away his wife except it were for porneia, fornicatio, adultery, he commits adultery:* so that whether you make it a true interpretation of *Moses's* law against the
glosses

glosses of others, or take it as a new precept belonging to the law of the Gospell, yet will it be an impregnable prooffe against all effeminate and childish divorces, for disagreement and contrariety of mindes.

If any shall say, if Christs words hold universally and except no cause but adultery: then all other causes, as frigidity, marriage within degrees forbidden by *Moses*, &c. are no causes of divorce no more then contrariety of minde.

Object.

Christs speech holds universally according as he intended it, namely, to condemne all such grounds of divorce as were groundlessly practised amongst the Jewes, for every cause which they thought sufficient, and yet no wayes checks the law which forbids marriage within the degrees of affinity or consanguinity, or forbids other cause which makes marriage void *ipso facto*; or by due proofes may make void the marriage. If there be any other objections against this place, we shall refer them to what will afterwards be said in explication of this text, and of *Dent. 24. 1.*

Answer.

The seventh Argument is: If the Husband and Wife be by the Ordinance of God one flesh, then may they not separate or be separated from one another, except it be for some cause which either in it selfe or by consequence may justly be thought to be a just cause of dissolving the union of being one flesh. But the first is true, *Ergo*, also the latter.

7 Arg.

For the first part, that the Husband and Wife are one flesh, *Paul* confirms it, *Ephes. 5.* and Christ himselfe *Matth. 19.*

And for the second part of the Argument as it depends upon the former, viz. if they be one flesh, then they ought not to separate or be separated. Its the Argument of Christ himselfe against the Pharisees, why divorce ought not to be for light causes, but for adultery only; because saith he, *they are no more two but one flesh*, therefore, *whomsoever God hath joyned together, let no man put asunder.*

Only as I intimated, such other causes may be allowed of as dissolves this union of being one flesh, either directly, or by consequence.

But sure contrariety of disposition and unfitness of minde can be no such thing as makes the Husband and Wife (being once by marriage one flesh) to be two againe.

In

8 Arg.

In the next place I conceive something may be gathered to this purpose from the words of *Paul*, 1 *Cor.* 7. when speaking of marriage, he tells them, *such should have troubles in the flesh*, and not that freedome to serve God which the unmarried had: yet he concludes, he spared them, and would not forbid them for that cause to marry.

Now if troubles in the flesh comming by marriage which hinder the cheerfull service of God, be not a just cause to forbear marriage: Then it would seem that to persons that are already married and bound to each other by the union of one flesh, by covenant, by love, by the bonds of Christianity, although through the pcevishness or ill dispositions of their natures, their troubles should increase to multitudes above what is ordinarie betwixt married persons, yet ought they not to part and to marrie to others, because some sort and measure of troubles and discontent in marriage are inavoidable; and therefore where one is by marriage bound by so many bonds, he ought not to break the bonds to ease himself of disquietness and trouble which is inseparably incident to marriage, though not in that degree as he now lies under, and is subject to.

Yet am I not over confident of this Argument, but that with some colour of reason it may be evaded.

9 Arg.

In the next place, if the Husband ought to love his Wife as himself, then may he not for discontent or disagreement put her away, no more then for some discontent or disquietness in himselfe, he may separate his soule from his body. But the first is true, *Ephes.* 5. ult. Ergo the latter.

10 Arg.

Lastly, we may fetch an Argument from the inconveniencies that would follow if divorce were suffered, for this disagreement of disposition and unfitness of minde, as for example, it would be an occasion to the corrupt heart of man without any just cause at all, meerely for to satissie his lust, to pretend causes of divorce when there is none; and to make quarrels and live discontentedly with his Wife, to the end he might have a pretence for to put her away: who sees not, how many thousands of lustfull and libidinous men would be parting from their Wives every week and marrying others: and upon this, who should keep the children of these divorcees which sometimes they would leave in
their

their Wives bellies? how shall they come by their Portions, of whom, or where? and how shall the Wife be endowed of her Husbands estates? Nay, commonly, to what reproach would the woman be left to, as being one left who was not fit for any ones company? and so who would ventuae upon her againe. And so by this means through her just cause of discouragement, she would probably hazard her self upon some dishonest and disgracefull course, with a hundred more the like inconveniencies, even as the overturning and overthrowing of all humane society, which would inevitably follow if this loose Doctrine of Divorce were once established by law.

To these Arguments we might adde the consent of Antiquity, who in this follow the direction and doctrine of Christ.

As *Concil. Tolet. 12. Can. 8. Preceptum Domini est, ut excepta causa fornicationis, uxor à viro dimitti non debeat. &c.* Its the command of the Lord, the Wife should not be put away but for fornication. So *Cod. lib. 3. tit. 38. leg. 11. const. Quis ferat, &c.* who can endure that Children from Parents, and Wives from Husbands should be separate?

So *Consil. Anglic. 670. Can. 10.* No man may put away his Wife, except as the Gospell teacheth for fornication. It is true, some of the Imperiall lawes allow Homicide, Sacriledge, Robbery, Manstealing, &c. for causes of divorce. *Cod. lib. 5. tit. 17. leg. 9.* but the Canon law decrees otherwise.

Divers other authorities might be alledged as to this point rightly agreeing, as *Greg. causa 29. quest. 7. cap. 19.* So *Zach. causa 29. quest. 2. cap. 2.* So *Instin Martyr Apol pro Christianis sub initio.* *Tertullian* agrees *lib. de Monogamia.* As also the Confession of Saxony *Artic. 18.* Especially is *Erasmus* most cleare in this in his Paraphrase upon the New Testament: And for our own Writers it is endlesse to name them being so numerous.

Thus have we briefly passed over the two first things propounded to be handled.

In the third and last place we come to answer the Book intituled, *The Doctrine and Discipline of Divorce*, which maintains the contrary, to what hath been here asserted, to answer which was the main thing intended in this Discourse.

So without any Preamble or Answer to the Introduction to
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this following Discourse, we will presently come to the main Pillar upon which his whole Book is built, which is laid downe in these words.

Position.

That, undisposition, unfitnesse, or contrariety of minde, arising from a cause in nature unchangeable, hindring and ever likely to hinder the main benefits of conjugall society, which are solace and peace, is a greater reason of divorce then naturall frigidity, especially if there be no children, and it be with consent.

This being that which all his insuing discourse is brought to prove, we shall first consider of the position it self, and then come to answer his reasons brought to defend the same.

This his Position or Ground-work as we conceive, may be divided into these four entire Propositions or Conclusions.

1. That there is in some men and women a disposition, unfitnesse, or contrariety of minde, arising from a cause unchangeable in nature.
2. That such a contrariety of disposition hinders the main benefit of marriage or conjugall society.
3. That solace and peace are the main and chiefe ends of marriage or conjugall society.
4. That such a contrariety of minde or disposition is a greater cause of divorce then naturall frigidity.

1 Answ.

To the first we answer, that there is no such disposition in nature as is unchangeable, so teacheth Philosophy: That by the carefull use of diet and the help of Physick, there is no disposition or constitution but may be altered, if not altogether, yet in a great measure. And as Philosophy teacheth so, that it may be; so Naturall History teacheth, that sometime there is a change even in the naturall disposition, if not wholly, yet in part.

2 Answ.

Suppose there were some disposition in nature altogether unchangeable, yet the Scripture teacheth, That by the grace of the Gospel, the Lionish dispositions shall so be changed that they shall be fit for the society of milder natures; and if so, it will follow, that if the disagreeing dispositions of a man & his Wife are from their own corruption, and for want of the grace of the Gospel, that they may not for this be separate the one from the other: for it is a rule in all lawes both Divine and just Humane lawes, that no man shall take advantage of his own corruption,

to

to release himself from such bonds as God and Nature hath knit him in. So that here, unchangeablenesse of a corrupt disposition proceeding from a mans or womans own fault and corruption, will never be allowed for a just ground, for any man to seek a Divorce from his Wife, or the Wife from the Husband, but rather a Divorce or parting with their own corruption, which is the cause of all discord and disagreement.

2. To the second Position, that such a contrariety of disposition will hinder the maine ends and benefits of mariage or conjugall society.

We answer :

That if by contrarietie of minde is meant diversities of constitutions, then is it untrue : for the soft words and carriage of the patient man or woman, will so farre prevaile with the cholerick or fullen disposition of the other party, not only to a submission to the main conjugall and mariage duties, but even to ordinarie converse, as experience declareth, and *Salomon* teacheth, namely, that *soft words pacifie wrath*, which in effect is the same we speak.

1 *Ans^w.*

If by contrarietie of minde or disposition he will mean some unheard of thing, which God and Nature hath planted on purpose in such a man and woman who afterwards shall marry, who shall hate one another with that mutuall antypathie as a man doth a Toad or Poyson ; and this is not at all for any ill qualities that either sees in each other, but because they will hate each the other, as creatures between whom in nature cannot be any agreement. If he can finde such an example in the World, let him lend his Book to them for to take the benefit of it.

2 *Ans^w.*

If by your contrariety of disposition, you mean a sordid filthy fullen disposition, or other crabbed qualitie, kindled in each against the other after mariage, and increased by each mutuall provocation ; this is not naturall : no contrarietie in Nature, but a sinfull and corrupt aberration from Gods law and their owne duties, which they are bound to purge away and to amend ; and so not being naturall or of nature, but corruption wilfully nourished, if this should hinder in any the main benefits of mariage, yet doth it make nothing to your purpose.

3 *Ans^w.*

3. To your third Proposition, That solace and peace are the main benefits of conjugall society.

We Answer.

Ans.

That this is very true in a right sense. But that solace and peace which is contrary to discord and variance (in which sense you seem to take it) is not the main end of marriage or conjugall society, is very plain and apparent: nor yet the solace and content in the gifts of the minde of one another only, for then would it have been every wayes as much, yea more content and solace to *Adam*; and so consequently to every man, to have had another man made to him of his Rib instead of *Eve*: this is apparent by experiences, which shews, that man ordinarily exceeds woman in naturall gifts of minde, and in delectableness of converse; upon which we suppose it may be plainly concluded, that the solace and meetnesse of a helper to *Adam* which is spoken of, was not that which you seem to speak of as contrary to discord only, but is a solace and a meetnesse made up chiefly as of different Sexes, consisting of Male and Female.

Prop.

To your fourth thing, that contrariety of disposition is a greater cause of divorce then naturall frigidity.

We Answer.

Ans.

Contrariety of disposition or constitution is no cause at all of divorce (as shall be afterwards shewed in the Answer to your Arguments) or if it were a cause, yet not greater then naturall frigidity, as will appear. For,

1. Contrariety of minde or disposition, may easier, or at the least as easie in nature be taken away and cured, as naturall frigidity or coldnesse.

2. But secondly, to prove that contrariety of disposition is not so great a cause of naturall divorce as naturall frigidity, I argue thus.

If contrariety of minde or disposition be not so great a cause to leave married persons to burning in lust towards others, as naturall frigidity is, in the one married partie, to leave the other to burn in lust to others, then is it not so great a cause of divorce as naturall frigidity is. But the first is true, *Ergo* the latter.

For the first part of this Argument its apparent, for contrariety of dispositions is no cause of burning in lust towards others; because notwithstanding that, they may, and we see usually doe performe marriage duties each to other. But on the other side

where

where naturall frigidity or coldnesse bears sway, i. e. an impotency to mariage duties, there the other partie is, as to burning in lust, as if they were not married at all, or very little better, and for want of conjugall duties by their yoke-fellow, and an impotencie to the same, they are in a great measure as likey to burne in lusts towards others as unmarried persons are; which such as have only a contrariety of minde or disposition properly so called are not likely so subject to.

As for the second part of the Argument, that if contrariety of mindes be not so great a cause of burning in lust as naturall frigidity, that then it is not so great a cause of divorce as naturall frigidity. This appears from what was said before, namely, because by the naturall frigidity of the one, the other is in its manner, as to mariage or mariage duties, as if they had no yoke-fellow, and so if the mariage it selfe be not void *ipso facto*, yet all law and reason must yeild, that for the reason before cited he ought rather to be relieved by leaving his impotent yokefellow, then the other by leaving his or her wrangling yoke-fellow.

So much for to shew the error of your position, upon which all your following discourse is, or ought to be grounded.

Now to your reasons which are to prove contrariety of disposition a just cause of divorce; where we are to take notice, that you in your reasons go not about to prove your Position as you have laid it down, but only that contrariety of minde is a just cause of divorce between married persons, not taking notice whether it be unchangeable in nature, or whether it be a greater cause of divorce then naturall frigidity, or whether there be children between them, or consent, as he hath exprest himself in his Position.

We shall endeavour to trace you in the Roade you goe, only we shal be driven to contract or shorten your Argument for brevity sake.

But before we come to your particular Arguments, the Reader is to take notice of one thing, namely, that all his Arguments, to prove a man may put away his wife for disagreement of minde or disposition, except it be his Argument from *Deu. 24. 1.* they prove as effectually, that the Wife may sue a Divorce from her Husband upon the same grounds.

1. Arg.

Your first prooffe is the institution of marriage Gen. 2. to make woman a meet help for man, because it was not good that man should be alone: whence you collect that a happy conversation by preventing lonelinessse, was the chiefest and noblest end of marriage; and in case this end cannot be found in marriage, there may be reliefe by parting.

Answ.

We answer and tell you againe, that it is a happie or a pleasant conversation, made up by creating them male and female, and not simply as Eve was a fit conversing soule for Adam, as you afterward expresse it, for then would it have been more pleasant and beneficiall to Adam to have had another man created, then a woman.

2. What will follow upon this if it should be granted? will it follow, think you, that because the end of marriage is, that woman should bee a meet helpe to man, therefore if shee prove not so meet as is expected, he may then put her away and take another: I hope no: Such kind of reasoning deserves no answer at all. But now to his second Argument.

2 Arg.

His second Argument is, *From the violence and cruelty which is in forcing the continuance of those married persons together, whom God and nature in the gentlest ends of marriage never joyned.*

Answ.

As for the phrase of the gentlest ends of marriage, its too abusive and of no use, except it be as you think to please the Reader with a neet phrase.

And for the maine of your Argument, you take too much for granted: for though the case may be so, that some persons are joyned together in marriage neither by God nor Nature, viz. not allowings of it; yet that for disagreement of dispositions or contrarietie of mindes the marriage should be void, we deny; for voide it must needs be, if it be neither of God nor Nature. Now where a thing is void *ipso facto*, there needs no legall proceeding to make it void. For clearing of this I hope you remember this distinction in our law, that some things are void, and some voidable by due proceffe of law. For example, if *John a Stiles* should enter into a bond of an hundred pound to *John a Nokes* with condition annexed, that if the Obligor did kill a third person before such a day, then the Obligation should be void. This Obligation being with a condition against law, is void by the very making of it, and the Obligor needs not

to sue the Obliged in Chancery, to compell him to free him of the penaltie, because void in it self.

On the other side, some things are voidable, *i. e.* to be made void by the partie himself by Proceſſe of law; as if *Titus* within the age of twenty one years makes a feoffement, levies a fine, or suffers a recovery of land to *Sempronius*, this is not simply void, but voidable: so that *Titus* when he comes to age, if the conveyance were by feoffement, he may remedie it by his Writ of *Dum ſuit infra aetatem*, if it were by fine or recovery reverse them by error, because within age at the time. To apply it to your case, if men and women of disagreeing dispositions being joyned in mariage, the mariage is void, being neither of God nor Nature, then there needs no Divorce or legall proceeding to part them, and then it is nothing to the Title of your Book, being *The Doctrine and Discipline of Divorce*, which you pretend to handle, briefly when you have proved, that such men and women who are married, and are of contrary dispositions or mindes, that their mariage is void, or not of God nor Nature, we will grant you the whole controversie, in the mean time it is too great a begging of the question.

In your prosecution of this Section, you are pleased to saine an Objection, *That the disposition ought to be knowne before mariage.*

You are pleased to answer, *That a discreet man being wary in this, yet may be mistaken; for say you, the sobrest and best governed men are least practised in these things.*

But how so? if sobrest and best governed I hope they are the better able to judge of the disposition and carriage of a Maid or Widow: But go on. You say, *Who knows not that the bashfull mutenessse of a Virgin may oft times hide all the unlivelineſſe and naturall sloth, which is really unfit for conversation.*

Some are bashfull and mute indeed: but what of that? you speak of triall of them whether they are fit for conversation or no: if you would once tell what you mean by conversation, I doubt there is none so modest but you may make tryall of that: If you mean fit for discourse, and flexible to your desires, to go abroad or stay at home, &c. I know nothing of any modesty to hinder you, the tryall of these things before mariage, if you have so much time.

Answ.

You

You adde, *That there is not that freenesse of accesse granted or presumed, as sufficeth to a perfect discerning till it be too late.*

Sir we beleeve you say things to your self, to make good your Arguments. Kings and Princes indeed usually have little accesse to their Queen or Princess before mariage; but for lower degrees, sure so much accesse is granted, without any immodestie to discern what you speak of.

You further go on, and say, *That though they who have lived most loosely, prove most successfull in their matches, because their wilde affections unsetling at will, have been as so many divorces to them to teach them experience: When as the sober man honouring the appearance of modesty, and hoping well of every sociall vertue under that veile, may easily chance to meet, if not with a body impenetrable, yet often with a minde to all other due conversation inaccessible.*

2 *Ans.*

Modest men seldom deal with any, who as they are not of bodies impenetrable, so neither are they to all due conversation inaccessible. It is true, if every man were of your breeding and capacitie, there were some colour for this plea; for we believe you count no woman to due conversation accessible, as to you, except she can speak Hebrew, Greek, Latine, & French, and dispute against the Canon law as well as you, or at least be able to hold discourse with you. But other Gentlemen of good qualitie are content with meaner and fewer endowments, as you know well enough.

Very true it is, that it is not amisse, for men of the best capacities, learning, and breeding, that they should match with those of the best wits, qualitie, and breeding, and leave the duller Virgins for the simpler sort; there is enough to own them, and ordinarily they fall to their shares, and that it is not alwayes so, you have no need to attribute it to modestie, that men doe not try their Sweet-hearts wits before they have them: you know that may be done with modesty enough, although to try whether their bodies are impenetrable (as you call it) favours of the contrary.

Well, but you goe on to make up this your second Argument from the diverse evils that would follow if Divorce should not be suffered for contrarietie and disagreement of mindes.

The

The first you say, *Is an imputation upon God and his law, of dispensing with open and common adultery among his own people; which, say you, the rankest politician would think it shame and dis-worship, that his lawes should countenance any such thing. But the shewing how this comes to passe, you say you will reserve to another place.*

We answer you, that we think this the fittest place for this Controversie, seeing you have named it here, and therefore shall free the law of God from any such imputation, and clear that here which you after bring from *Moses*, permitting divorce, and the sence of Christ in the Gospell.

Ans^r.

Only first we shall speak to your phrase and manner of speaking, and then to the matter of it.

Your phrase is, *That such an imputation as would be cast upon the Law of God by this means, the rankest Polititian would think it shame and dis-worship that his lawes should be charged with any such thing.*

Is this the fine language that your Book is commended for: Good your worship look a little upon your Rhetorick in this one piece, shall I say of nonsense: however I am sure it is contrary to all lawes and customes of speaking. *Rankest Polititian. Wonderful!*

What a Boarish Adjective you joyne with a Polititian. Polititian is a title worthie of honour and respect, and why you should so disgrace it with this homely language, I cannot imagine; except it be, because Polititians ordinarily differ from you in this your opinion. For although its likely some Polititians sometimes at a time of need are content to make use of others then their own wives, yet to be divorced from their own upon a little contrariety of mindes or dispositions, Polititians will not easily agree to it.

But to go on, *The rankest Polititian would think it shame his lawes, &c.* His lawes; strange! Where were you bred? Sir, What are the lawes of your Common-wealth made only by one Polititian? sure that same is a barren Countrey of Noble and Learned men. And if it be not barbarous, yet is it a very harsh phrase, to call the lawes made in any Common-wealth, the lawes of the Polititians, much more of one only Polititian.

But peradventure you mean the King, and the lawes may be called his, you think.

D

If

If you do mean him, its no usuall phrased to call him Polititian without farther addition: or if it were, you know its no good sense in your own countrey, for I beleeve you are not to heare of, *Qui vulgus elegerit*: And if you meane of some other Countrey, write your Book in their language, for the English will but deride such language as this is.

Againe, *He would think it shame and dis-worship*, (say you) to what, say I? to his lawes: strange Philosophy! Are lawes now capable of shame and blushing? Speak a little plainer if you have any such point to broach.

But, peradventure you meane, the Polititian would think it shame and dis-worship. Well, but upon whom do you mean he thinks this shame and dis-worship will light? for you shew us not whether the Polititian would think this shame to redound to the lawes themselves, or to himself, or to a third person or thing, pray let's know the next time.

But againe, why shame and dis-worship? Do the lawes or the Polititian that makes them, use to be worshipped in your Common-wealth? Well, we leave the Gentleman of that worshipfull countrey, who looks for Good your Worship at every word, and *Utinam* they are not too worshipfull to be W.

Thus from your phrase we passe on to the matter, which should be put in here for the prooffe of this first evill: namely, that denying of divorce for cause of contrarietie of minde and disposition, will cast an imputation upon the law of God, of dispensing and conniving with common and open adultery amongst his own people.

Well, how do you prove this? For the prooffe of this we must be driven to bring in your Text of *Deut. 24.1.* which as you say, *permits, nay, is a wise and pious law, that such who did not love their Wives for some displeasing naturall quality or unfinesse in her, he should write her a Bill of Divorce*: so you speak pag. 26. compared with pag. 10. Now how this imputation will come to fall upon the law of God, I believe you mean thus. That for a man to divorce his Wife unjustly and to marrie another, is adultery: But the law of God allowes divorce unjustly, except disagreement of minde, or unpleasant naturall qualitie be a cause. *Ergo.*

In plaine tearms you mean God by *Moses* suffered men to put away

away their wives, if they found not love and favour in their eies ; by reason of some unpleasing natural qualitie, (for so you are pleased to reade the Text of *Deut.* 24.1.) Now you infer, if *Moses* allowed this, and yet indeed it was not a just cause of divorce, then did God by *Moses's* law tolerate adulterie, in that it tolerated a man or woman to marrie to another, whilest they were not lawfully parted from their first Husbands or Wives.

To take off this great Scare-crow and the maine Pillar which he trusts in to hold up his whole Book, or most part of it : it will be necessarie a little to consider of this Text of *Deut.* 24. 1. whether it doth indeed speak any such thing or no. Our English Translation hath it, If a man shall take a Wife and lie with her, and she finde not grace in his eyes because of some uncleannesse, let him write her a Bill of Divorce. So that it is for some uncleannesse, and not for some displeasing qualitie that is in her. According to our English : the French Bible agrees, *Pourtant que il a trouue quelque laide tache in elle*, because he hath found in her some foule, dishonest, or abominable reproach, spot, or infamy ; for so signifies *laide tache*. *Ieromes* Translation hath it, *Propter aliquam foeditatem*, filthinesse or shamefull thing. *Iunius* and *Tremelius* agrees.

A Translation according to the Septuagint printed at *Basil* hath it, *Quoniam invenit in ea foedam*, the Septuagint reads it *ὅπου ἐν αὐτῇ ἀχρηστία καὶ αἴσχος*, the Substantive *pragma*, is used, *Acts* 5.4. to signifie *res* ; and *1 Cor.* 6.1. *negotium*, businesse : *James* 3.16. *opus* or work : and the Adjective is used by *Paul* *1 Cor.* 12.23. for *indecorus*, shamefull, dishonest, or unbeseeming : so signifying that they understood this place of *Deut.* 24. 1. to be meant of some shamefull or dishonest thing. So they which translate by the Septuagint have it, *rem turpem*, filthy thing. In the Hebrew it is *Gneruath Dabhar*, the very same words which are used *Deut.* 23.14. The Lord thy God walketh in thy Camp to deliver thee, therefore shall thy Campe be holy, that he see no *Gneruath Dabhar* in thee : that is, no uncleannesse or unclean thing, as is apparant by the foregoing Verses : so here, if she finde not favour in her Husbands eyes because of some *Gneruath Dabhar*, some uncleannesse or unclean thing. The Hebrewes themselves expound this Text, to be understood of a woman of evill condi-

tion, who is not modest according to the honest Daughters of Israel. So that here seems to be no ground for your understanding the Text to speak of any unpleasing naturall quality, when as indeed it speaks of uncleanness: so that as we conceive, the maine Pillar of your Book is not able to hold up it self, much lesse will it serve for a prop to hold up the rest of your discourse.

Object.

But it may be demanded, what manner of uncleanness this Text speaketh of; for it seems it cannot be meant of adulterie: for Christ speaking (as it seems) with a relation to this Text, *Matth 19.* saith, *Moses* indeed suffered you to put away your Wives, &c. But I say unto you, whosoever shall put away his Wife except it be for fornication, commits adulterie; so that which *Moses* suffered to put away Wives for, was another cause then what Christ here speaks of, namely, fornication, which could not be that which *Moses* suffered putting away for, seeing Christ opposeth putting away for fornication to putting away by *Moses's* law.

Answer.

To this we answer, that though it be little materiall to our point in hand, what uncleanness this Text *Dent. 24. 1.* speaks of; whether it be a legall, ceremoniall, or a morall uncleanness; for it sufficeth to our purpose, if it be not some unpleasing naturall qualitie, as this author hath affirmed: Yet we shall humbly propose to the judicious and learned with their favour, and under correction, what uncleanness this Text of *Dent. 24.* speaks of.

Not proposing it as a sense infallible, but one which may be something probable.

And that is, that this Text *Dent. 24. 1.* speaks of an uncleanness committed before marriage, which we usually call by the name of fornication; the same uncleanness which is spoken of *Dent. 22. 13, 14, 15, &c.* Where it is said, *If a man take a wife and lye with her, and hate her, and shall say, I took this woman to wife, and when I came in unto her I found her not a maide; and the Text goes on, and shewes what shall be done in this case.*

This Text is doubtless to be understood of a man who takes a Wife and findes she hath committed follie before marriage, which we ordinarily call by the name of fornication. The same kinde of uncleanness (under correction) may be here meant: that when a man marries a Wife and findes her not a Maide, but defiled,

fled, and to be uncleane by fornication committed before marriage.

Against this sense of the place we conceive there may be two strong objections made which we shall endeavour to answer, and so leave it to the consideration of the Reader.

The first Objection may be from that Text *Deut. 22. 12, 13, &c.* where the direction is there, that if it be found according to the complaint of her Husband, that she was not a Maide but defiled, that she should be stoned to death, and not be put away by Divorce; by the same reason, if this Text of *Deut. 24. 1.* speaks of that uncleanness, she ought to be stoned to death, and not suffered to escape by Divorce.

1 Object.

To this we answer two things.

First that there was a twofold uncleanness or defilement of Virgins by the law; the one was, when she consented not to the uncleanness or defilement, but it was committed upon her by force, and this in the Maide did not deserve death, as is shewed *Deut. 22. 26.*

1 Answer.

Secondly, there was a defilement with the consent of the Maide, and this seems to be distinguished by the law to be of two qualities.

1. The first was, when a man by inticing words should tempt and intice a Maid to lye with her, and she upon his promises and inticements yeilded to it, but presently after the fact did discover it to her father or kindred, to compell the same man to marrie her: and of this kind it seems is spoken of *Exod. 22. 16.* In this case the man was compellable to marry her, and so she was not in this case to be punished with death.

Secondly, there was another distinction of this defiling of a Virgin, viz. When the Maide consented to commit folly with any privately, and so as it proceeded from her whorish spirit principally, with a meer desire to commit filthiness, as a common Strumpet or Whore, and concealed this; so that the partie by her concealment could not be compelled to marrie her: and after, this defiled Virgin takes another man to Husband, and he findes her not a Maid, but to have committed follie in her fathers house, and never declared it, to the end the man who committed follie with her might be compelled to marrie: this (under fa-

your) is that which *Deut.* 22. 13, 14, &c. was to be punished with death, and a Divorce not to serve the turn.

But then for the uncleanness, *Deut.* 24. 1. which a man found in his Wife, it might very well be, that a man ignorantly took such a woman to wife, as either had been ravished by force (as in the first sense) and so was defiled, or that had been defiled by the inticement of some man, of which fact she had made knowne to her father, to the end to compell him to marry her who defiled her, and her father upon knowledge of it utterly refused to give her to him to Wife, as *Exodus* 22. 17. and she after marries another who findes her defiled or uncleane is displeased therewith, so that she findes no favour in his eyes, he may not in this case prosecute her to the death, as in *Cap.* 22. but only divorce her, as *Cap.* 24. 1. & 2.

2 *Ans.*

But secondly we answer, that in case it should be the same uncleanness and defilement with that *Deut.* 22. 11, 12, &c. then we say it was left by the law to the choice of the man to prosecute her to death, as *Cap.* 22. or to Divorce her, as *Cap.* 24. And though I know this will sound very harsh and irreconcilable at the best: yet (under favour I conceive) I may as easily reconcile these two places thus together, as Christs speech, *Matthew* 5. 32. can be reconciled to the law of adultery. For as I conceive, there is no man but will confesse that at that time when Christ spoke, the law of putting to death for adulterie was in force; and yet you see, *Matthew* 5. 32. he sayes not, he that prosecutes not his Wife to the death for being an Adulteresse, is guiltie: but whosoever puts away his Wife, except for fornication, he commits adulterie.

Now if there had been an absolute necessitie in the man to prosecute his Wife to death for adulterie, I suppose Christ would never have mentioned Divorce, for that which must of necessity have death. So it may seem it was left to the mercy of the Husband. The same I say to the reconciling the command of putting to death the defiled Virgin, *Deut.* 22. and divorcing her, *Cap.* 24.

It

It may further be objected, that it cannot be the same uncleanness meant here which in *Chapter 22.* because there direction is given for a triall of the charge of uncleanness laid to her, but not so here: and if upon triall there it be found a false charge he may not put her away all the dayes of his life.

Object.

To this we answer two things.

First it will not follow, but that the same triall ought to be in the *24 Chapter* as in the *22.* although not mentioned, yet to be understood; as well as the fathers dissent to the mariage of his Daughter to one who hath defiled her be not mentioned, *Deut. 22. 29.* yet is to be understood as well as it is *Exod. 22. 17.* where it is mentioned.

1 Answer.

But suppose the same triall be not to be understood in the *24 Chapter* as in the *22.* yet will it not follow but that it may bee the same uncleanness (onely differing in the consent of the Maide, &c.) for though it be the same uncleanness, yet doth there not need that examination and tryall where onely a divorce is intended, as where death is intended.

2 Answer.

But there seemes to be another great Objection against this sense of the word Uncleanness, that it cannot be meant of fornication before mariage; because Christ speaking with relation to this Text, as it seemes, understood it otherwise then of fornication, as appears by his conclusion, that whosoever should put away their Wives except for fornication, &c. So that it would seeme plaine CHRIST understood not this Text to bee meant of fornication, for he seemes to blame this putting away founded upon this Text, and yet allowes divorce for fornication.

Object.

For answer to this briefly, wee conceive the words fornication and adultery are used in the New Testament, if not reciprocally, yet at the least promiscuously: and that that by fornication is many times meant more then uncleanness: committed betweene unmarried persons: as *1 Corinthians 5. 1.* there the word fornication is used and applyed to incest: And in *1 Corinthians 10. 7.* Neither let us

Answer.

be

be fornicators, &c. being applyed to the Israélite *Numb. 25.* who lay it is said, with the woman of *Midian*, which seems to be no Maid, for the title Woman is seldome applyed to them: So *1 Cor. 6.* he that commits fornication sins against his own bodie, is doubtlesse to be understood of adulterie as well as of uncleannesse between single persons, if it be not solely meant of adultery.

So then our answer is, that the word fornication is often used for adulterie, after mariage: and we conceive Christ intended it so, when he saith, *Whosoever shall put away his wife, except for fornication, &c.* that is, for adultery, or defiling his mariage bed; and so Christ speaks not of the same uncleannesse *Moses* doth, although *Moses's* should be meant of fornication.

Thus you have our first answer to this your place of *Deut. 24. 1.* that it is meant of uncleannesse, as the Originall and other languages reads it: and though we are not over confident of the kinde of uncleannesse whether it be fornication before mariage, as we have shewed, or some naturall, legall, or sinfull uncleannesse, it much matters not: this we only propose to the Readers consideration, upon triall to reject it, or receive it as he findes it upon examination.

But in case this answer fails; we have two other answers to your place of *Deut. 24. 1.* only two Objections remain.

• *Object.*

1. That Christ findes fault with this Divorce grounded upon *Moses's* law, and shewes it was not so from the beginning, nor ought not to be so now: which proves the divorce for uncleannesse *Deut. 24. 1.* cannot be understood of fornication, or uncleannesse committed before mariage, for that was alwayes allowed of from the beginning as a just cause of divorce, and so seems to be now.

Answer.

To this we only answer, that when either of these two are proved, we shall willingly let fall that interpretation; in the meantime we leave it to the considerate Reader.

Object.

2. But it may be further objected, that whatsoever it was that *Moses* allowed of Divorce for, whether for fornication before mariage, as is said before, or for some displeasing naturall quality, as our Author would have it; yet the imputation of dispensing with common adultery is not taken away, in case it was not a just

just cause of divorce. For answer to this we come to our second answer to this place of *Deut. 24. 1.*

In the second place we answer to *Deut. 24. 1.* in case your reading should be found good to be of a displeasing naturall qualitie, and that they did unjustly put away by this law their wives: then we answer, this place of *Moses* permits no divorce at all; but was only a law made in favour of the woman who was unjustly put away, and a sufferer: in this case *Moses* provides, that though a woman should be wrongfully & by force be put away, yet he would by this law compell the Husband to give her a Bill of divorce, which should be a token to her father and her friends that it was the act of her husband to dismiss and put her away, and not her voluntary act: for which, had it been voluntary on her part, she would have been judged a Whore and a wandering Vagrant, and so would scarcely have been received into her fathers house: so that *Moses* may seem here not to give any law of divorce; but rather a law to compell such of the Jewes, who in their cruelty, and from the hardnesse of their hearts would unjustly and by force put away their wives, to make them a writing of divorce and to give it her, which should be a testimony for the woman after she departed, that she wandered not as a Whore or a Vagrant of her own minde from the company of her Husband, but it was his fault by force to put her away.

For the prooffe of this sence of the place we conceive three things make to this purpose.

1. Because I finde no law of divorce allowing men to put away their wives before this law, (if in case this should be found to be such a law) and yet I finde divorce practised by the Jewes, therefore *Levit. 21. 14.* it is commanded to the Priest, that he should not marry a Widow, or a woman that was divorced, which implies there were some women divorced. Now if divorce was practised and no law allowing it, I have reason to think this place of *Deut. 24. 1.* is a law to remedie the extremity of their unlawfull divorces, by compelling them to make a Bill in favour of the woman that was put away, and not a law either commanding or allowing the divorce it selfe.

2. It seemes to appear from the connexion of the words, hee shall give her a Bill of divorce, that when she is departed out of
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his house she may become the Wife of another man; so that the Bill seems meerly to be made for her benefit.

3. The Text here allowes the woman to marry againe, she being the suffering partie and unjustly put away; but he being the offending, it speaks nothing of allowing him to marrie againe; so it seems the provision of the Bill of Divorce was for her benefit only.

Object.

Against this the words of Christ will be objected, *Matth. 19.* and *Mark 10.* to the Pharisees, when they had asked, if a man might put away his Wife for every cause, *Matth. 19. 3.* Christ answers, That God at the beginning made them Male and Female, and that a man shall forsake Father and Mother and cleave unto his Wife: the Pharisees upon this, ask Christ, why Moses did command to give a writing of Divorce, and to put her away; then Christ answers, *Moses, because of the hardnesse of your hearts suffered you to put away your Wives, but from the beginning it was not so.* So that some may say, Christ here seems to affirme not only the Bill of Divorce to be of *Moses*, but even the Divorce it self.

Ans.

It appears not to be so, but rather that Christ answers the Pharisees according to their opinion of *Moses* law, and he grants them that in some sort *Moses* might be said to suffer men to put away their Wives, because he commanded the Bill to be made in favour of the woman, the suffering party: but saith Christ, *from the beginning it was not so*, that men should put away their Wives as the Jewes did, neither was this Bill then invented: and this may seem to be the substance of Christs words.

3 *Ans.*

We answer to your Text *Deut. 24. 1.* in the third place, that if the other two satisfie not, then may that be a good positive law made by *Moses*, during the time of the Jewish politie or government, properly called Mosaicall: yet now Christ under the New Testament hath abolished that law to all his followers. To this purpose that of Christ *Matth. 5. 31, 32.* It was said unto of old, that whosoever shall put away his Wife, let him give her a bill of divorce: then Christ addes, *But I say unto you, Whosoever shall put away his Wife except it be for cause of fornication, causeth her to commit adultery, and whosoever shall marry her that is divorced committeth adultery.* This place of our Saviour concerning divorce may seem not to be to the end to reforme the false glosses of

of the Pharisees concerning divorce, (as it is usually thought) but rather to shew the law of the Gospell to require more mutuall love and passing by injuries then the law: As who should say, under *Moses*, where there was many duties required; and yet through the darknesse of the dispensation of heavenly things, there was little grace and power to performe what was required, then the law of Divorce did mercifully bear with the infirmities of people; and during the time of this dispensation, this law of Divorce was a good positive law: But now whosoever will be my follower and professe himself to have received the plenteous grace of the Gospell, he must be so farre from using hardship or unkindnesse to his Wife, or others to whom he is neerly bound, that he must not revenge wrong done from strangers & enemies, but pray for them, and blesse them; he must be so farre from turning his Wife out of doores for her ill cariage, yea although it should proceed to cursing and persecuting him, that he must use all mildnesse, and love, and godly means to reforme her; compare this with *verse 43, 44.* and indeed with all the latter part of the Chapter, and you will finde the drift of Christ, to give as it were new enlargements of lawes under the Gospell, requiring more spiritualnes in observation, then the Mosaical government.

This interpretation I cannot conceive to be either contrary to the scope of Christ in this Chapter, which principally is, to shew that he came not to destroy the law but to fulfill it: nor is it contrary to any other sound and wholesome Doctrine laid downe in Scripture, neither opens any gap to any to throw away *Moses's* law, as not at all pertaining to us. I think there is none that thinks, but that there were given by *Moses*, not only ceremoniall Precepts, but even judicall, to the Jewes, which for us to observe under the Gospell, would be so farre from piety, that it would be sinfull; and I know nothing why this law of Divorce may not be one.

Only one word to your corrupt and wicked glosse upon our Saviours words, *Matth. 19.* and *Mark 10.* where he tels the Pharisees, that whosoever should put away his Wife, except for fornication, he did commit adultery; you do put off the matter, as if Christs speech was never intended to forbid a Divorce, for your indisposition, unsitnesse, or contrariety of minde, but was

only as you say, That Christ here did only deale like a wise Physician administering one excesse against another to bring us to a perfect meane, and that where the Pharisees were strict, there Christ seemes to be remisse; and where they were too remisse he saw it needfull to seeme most severe: In one place, say you, he censures an unchaste look to be adultery already committed, and at another time he passeth over actuall adultery with lesse reproofe then for an unchaste look: So here, say you, he may be thought to give this rigid sentence against Divorce, not to cut off all remedy to a good man who consumes with a disconsolate matrimony, but to lay a bridle upon the bold abuser of those overweening Rabbies, &c.

Ans.

To this we answer, that this your glosse is not only intolerable abuse of Scripture, but smels very strongly of little lesse then blasphemie against Christ himself.

For what is it else, to say Christ was here most severe, where the Pharisees were most remisse, and that here he administered one excesse against another, &c. For though it should be found that Christ sometimes, to check the pride and hypocrisie of the Pharisees, should by his not affording them an answer seem remisse, where they were too severe, and so on the contrary. Yet that Christ should positively lay down a resolution, as one of his Precepts under the Gospell without any exception; and this his Precept to be an excesse to reduce the Pharisees to a mean, is too bold and dangerous an assertion for any man to venture upon.

And for your examples which you cite where Christ was one time remisse, and another time more severe against a lesse sinne, they are both utterly false; for in the one place Christ doth not say, that an unchaste look is adultery, but he that upon looking on a woman doth lust after her, he hath committed adultery in his heart, so that it is not the looking on her, but the lusting after her which is adultery, and that but of the heart neither: truly I finde not here an excesse, or too much severity in Christ, but fearfull audacity in you.

And for your other example of the woman taken in adultery, where he was more remisse, and gave her not so sharpe a reproof as here for an unchaste look; this is as false, for he bids her goe away and sinne no more least a worse thing then death by stoning came to her; and I hope this is severer then Christ speaks of the unchaste look, as you call it.

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But to answer to what you chiefly intend, you are to know, Christ *Matth. 19.* doth not direct his speech concerning Divorce, as an excess against the Pharisees tempting question only, but as a firme stable resolution of the Gospell: to clear this consider but two things.

1 That Christ before this time had given the same resolution to his Disciples *Matth. 5. 32.* where he spake principally to his Disciples, as appeares *Verse 1.* And therefore it cannot be intended that Christ spake it to repress the pride and false glosses of the Pharisees only.

2 And secondly its apparant that Christ did intend otherwise then you say to contradict the Pharisees, for if he had only told them, that he which puts away his Wife except for fornication, committed adultery, this had been enough to have contradicted them: but he addes, that whosoever shall marry her who is put away otherwise, he commits adultery: And so I conclude, Christ intended this speech to his Disciples, as a direction binding all Christians under the Gospell; and gave it not as an expressive resolution to repress and cross the pride and false glosses of the Pharisees.

Now for the rest of your stuffe which fills many Pages about the sense of *Moses Deut. 24. 1.* and of Christ *Matth. 19.* and the opinions of other men upon the same, of which, some you approve, and some you confute, we conceive it needlesse to trace you, as thinking we have given you the true sense of *Moses* and Christ already, to which we referre the triall of all which you are pleased to speak upon the same.

In briefe the summe of our answer to this place of *Deut. 24. 1.* for the lawfulness of putting away a mans Wife for some displeasing naturall qualitie, is, that first, that it speaks of Divorce for uncleannesse, and not for disagreement: or secondly, if it doth, it allowes not of the Divorce, but appoints the Bill in favour of the woman: or thirdly, if it allowes both, yet now is it altered by Christ under the Gospell.

If any shall think these answers to fall foul upon each other, we easily grant it, and say its usuall in this kinde; and besides we write not as Prophets but as men: and if any of the answers be to the point, and overthrow that which we conceived to be an error, its sufficient.

Your second evill which you say would follow, if Divorce were not lawfull for displeasing naturall qualities, &c. is, *That the Law and the Gospell would be subject to more then one contradiction, but to shew this you deferre it to another place.*

Answer. We shall take it here, and tell you, its no contradiction at all, that *Moses* should allow a Divorce and *Christ* deny it, if it could be proved: For there is a twofold contradiction (as you know well enough;) one is, when the Gospell shall blame the Law for tolerating things contrary to it self, that one time it made a thing lawfull, at another time unlawfull; this is the contradiction you must speak of if you speak to the purpose, that the Gospell shall blame or contradict *Moses's* law, for maintaining contrarie things in it self.

Then secondly, there is a contradiction of the Gospell to the Law; that the Gospell counts some things under its dispensation to be altogether unlawfull to be done, which the Law allowed as lawfull and pious in the time of its dispensation: this kind of contradiction we grant there is betweene the Law and Gospell many times, but is nothing to your purpose at all: for example, Circumcision was a dutie of weight; now its a hainous crime: so Sacrifices, Offerings, Washings, and a hundred the like, and yet the Gospell blames not the Law for these things in the time of its dispensation: no more will it follow in case of Divorce, if it should be allowed then and denied now, except you can shew the first kinde of contradiction.

Your third evill which you say would follow if Divorce should be denied to such as are of contrariety of dispositions is, *That hereby the supream dictate of Charity, would bee many wayes violated and neglected.* But how is this done? You say, we know *Paul* saith, it is better to marry then to burne: tis true, *Paul* doth say so: what will follow of that? Is *Pauls* positive resolution become the supream dictate of Charitie? else how followes it, the supream dictate of Charitie is violated by denying Divorce on your grounds, because *Paul* saith it is better to marry then to burne: remember your self well, sure you think all Gospell you speak.

Well, what would you inferre from *Pauls* words, it is better to marry then to burne?

You say, *That marriage was given as a remedy of that trouble.* So say

say we; but yet not properly that ordination of mariage first in Paradise, for then was no such burning.

Well, go on; we ask you what this burning in lust is which *Paul* means: you are pleased to answer, *That, certainly not the meer motion of carnall lust not the meer goade of a sensitive desire, God doth not principally take care for such cattell.*

Truly you are apt to speake very high language: but what would follow if *Paul* should take care, not for the nourishment, but for the suppressing of a meer motion of carnall lust? Sure no evill.

Answe.

Well, but we will have your advice positively, as well as negatively, what the Apostle means, when he sayes *it is better to marry then to burne.*

You say, *It is that desire which God put in Adam in Paradise, before he knew the sinne of incontinency: it was that desire, which God saw it was not good that man should be left alone, to burne in a longing to put off solitarinesse, by uniting another body, but not without a fit soule to his in the cheerefull society of wedlock.*

We pray you seriously to retract this sentence, and openly to confesse you were asleepe when you writ it.

Answe.

We desire any indifferent man but to consider the scope of the Apostle in that Chapter of *1 Cor. 7.* and to tell us if your exposition of these words, *it is better to marry then to burne*, be not such a meer trifling and abusing the Scripture as seldome is met with. This must needs be a just Paraphrase upon *Pauls* words if your exposition were sound.

I Paul am a Batchelour, and I never met with any fit and meet conversing soule, to fit my desire, to discourse and converse with me as I had when I was in *Adam*; but I speake to you Virgins and Widowes, although it be thus with me, yet it were good if you could remaine solitary without any fit conversing soule to discourse with you: but if you cannot live altogether alone all the dayes of your life (however I thrust for my selfe) yet doe you marrie, viz. get some fit conversing soules, such an one as *Adam* thought of when he was alone in the Garden, and no bodie created but he. For it is better for you seeing you cannot live alwaies alone, to have some such fit conversing soule, to drive away the time with, then to pine away like a Dove in a Wilderness, where

where there is none to beare her company. This is the effect of your exposition of *Paul*, when he saith, *it is better to marry then to burne*: the relating of which your exposition is enough to confute it and make it lighter then vanitie it self.

So we passe to your third Argument, the effect whereof seems to be this.

3 Arg.

That the not allowing of divorce in case of contrariety of mindes and dispositions in married persons, will be a ground or occasion of their desire after other persons, besides their own Wives; because when a man findes no contentment at home he is apt to looke for the same abroad.

Ans.

We answer you, what if he do look abroad, so long as it is but to meet with a fit conversing soule, provided he meddles not with her bodie, let him recreate himself, its lawfull enough: tis your own doctrine, A fit conversing soule for man is the noblest end of mariage: Therefore I think we may without danger, let a mans reines loose to accomodate himself so, if his Wife hath not such a fit conversing soule as she should have, only let him remember to come home to her at night. If you should say, that you meane want of content at home will cause a man to lust unlawfully after the bodies of other mens Wives.

Ans.

Wee answer you there is no congruities in that sense with the rest of your Book: for according to your own Doctrine we may reason thus: That desire which is not satisfied at home by a mans own Wife, will break out towards other mens Wives; but the desire which is to be satisfied by a mans owne Wife is, that she be a fit conversing soule: *Ergo*, the not finding a mans Wife a fit conversing soule, will not endanger or stir up any other desires but to converse with the soules of other mens Wives; and this we allow you to do and keep your own still.

But enough of this: only we desire the next time you write, to tell us the meaning of this fit conversing soule. We have heard that Angels converse with one another as they are Spirits; but for Husbands and Wives, though they ought not to love in word only, but in deed and in truth with the affections of the heart, yet we know no conversing with one another, but what is by words or actions.

Well you goe on and talk in this Section, *Of a man meeting in- stead of a sweet co-partner of pleasant society, it often happens, that*
young

young men, who have put their chiefe content in a contented marriage, yet they meet with an Image of earth and fleame.

We confesse this is something a sad case: but yet I believe you speak but hyperbolically (as they use to say) for VVomen are usually more then earth and fleame, they have many times spirit enough to weare the Breeches, if they meet not with a rare Wit to order them. I wonder you should use such phraes; I know, nor heare of any Maids or VVomen that are all earth and fleame, much lesse Images of earth and fleame: If there be any such, yet you need take no thought for them, there are enough dull enough to own them; & for your self or any other who desire them, there are spirited Dames enough, who are something besides meere Images of earth and fleame.

Your fourth Argument is, *Because marriage is a Covenant, whose very being consists not in a forced cohabitation or a counterfeite performance of duties, but in unfeined love and peace.* Ans.

It is true, but how prove you by this, that if there be not found this peace and joy between married persons, there may then be a Divorce: for where the chiefe end of a thing is not alwayes attained in its full measure, yet will it not be lawfull to seek a separation from it. Will you argue, that because *Herman Psal. 88.* found not that peace and solace which is the main end of communion with God, that therefore he might break off that communion. Or how think you; suppose you should covenant with a man at *Hackney*, that he should dwell in your house at *Aldersgatestreet*, & you in requital would dwell in his house at *Hackney* for a time; I doubt not but your main end in this your Covenant was your own solace, peace, and refreshing. Well, but suppose when you come there, the *Cavaliers* or other Souldiers should trouble you, and should be quartered there; who peradventure if they did not quite put you out, yet would lie in your most pleasant Chamber best scituate for your solace and refreshing; and divers other waies would annoy you; by meanes whereof you could not enjoy that pleasure and delight which you intended in your Covenant, when you changed houses with the other. Think you in this case it would be lawfull or accepted on by the other partie if now you should come to him and say; Sir, I covenanted for your house at *Hackney* for my own refreshing, comfort, and solace,

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but I am disturbed of it, I do not enjoy the end of my Covenant, give me my ovvn house again, and go you live there. He would tel you, and so he might justly, stay Sir, take your own fortune, a bargain is a bargain, you must even stand to it. In the same case I suppose, though it be the end of mariage, that love and peace should be maintained; yet if it fall out otherwise they must be content.

But let us see your proofes to the contrarie: and that is say you, in such a case, where we finde not that content in mariage which was the end of it, but on the contrary vexation: *Paul* himselve speaking of Mariage and Divorce, determines therein, that God hath called us to peace and not to bondage.

Ans.

Well, we will examine what *Paul* makes for you, the place 1 Cor. 7. (though you seem loath to quote the place) where the Apostle speaks to Men and Women, who were Christians and had Infidels to their Husbands or Wives: And he tels them if any believer had a Wife who is an Infidell and yet she was content to dwell with him, that he should not put her away, &c. And then when he hath given the reason of it in the next Verse, he after tels them, that notwithstanding if in such a case the Infidell Husband or Wife will not dwell with their Christian Husband or Wife, but that they will depart and go away to live in some other place; a believer, saith *Paul*, is not in subjection in this case, but God hath called us to peace. Now what an argument will this be, if a Christian Husband hath an Infidell to his Wife, who out of spight and hatred to religion and to her Husband, and will depart and divorce her self, in such a case the Husband is not bound to follow her wandring about, to keep her company whether she resorts, on purpose from his companie. *Ergo*, will it follow that when a man dislikes his Wife, and she peradventure willing to live with him, yet he may by force against her will put her away: the truth is, this place makes quite against you as hath been shewed. But besides, you mistake the very Gramaticall sense, when you will bring in these words, God hath called us to peace, as a reason why the believing Husband may suffer his Wife being an Infidell to depart: for they rather seeme to be an Introduction to what he speaks after, how knowest thou O man whether thou shalt not save thy Wife, &c. As much as if he should say, though I tell you in the case before cited,

cited, a believer is not in subjection to his Wife, where there seems no means available with her to procure her cohabitation; yet says *Paul* I must tell you, God hath chiefly called us to peace, that is, he rather expects that as we are to follow peace with all men whatsoever, so especially with our Husbands and Wives, and to keep company and cohabitation together: and the Apostle saies in effect, I will give you a good reason for this; For how knowest thou O man, but that thou by dwelling and conversing with thy Wife, thou maist convert her and save her. So that it seems you are quite mistaken, in alledging this Text for your opinion.

Well, but have you any other Scriptures to prove this? Yes, say you, *For God himselfe commands by his law more then once, and by his Prophet Malachy, as Calvin and the best Interpreters reade, that he who hates his Wife let him divorce her, that is, say you, he who cannot love and delight in his Wife.*

We desire you to shew out of your new Scripture (if any such you have) where God in his Law commands, and that more then once, that he who hateth his Wife, should put her away; shew it but one time and we will yeild you the whole controverſie: If you meane *Deut. 24. 1.* that is but one place, and we have given you an answer to it.

And as for *Malachy*, although it be true, that some translations do reade it so, as *Jerome* and some Margents: yet why you should call these the best Interpreters of this Text, I know no reason, but because they agree with your opinion, which you dream to be the best. The last of our English Translations which other men count the best, hath it otherwise, *Mal. 2. 16.* and it saies, *for the Lord God of Israel saith, that he hateth putting away.* In the Hebrew it is, *Cisane shallach, amar Iehovah Elohe Israel:* which if your learning can make any other then a reason of what God had spoken before, you may peradventure make this place speak something for you. The truth is, this your reading is quite contrarie to the scope of the place; for God by his Prophet *Malachy* in the former verses vehemently complains against the Jewes for dealing treacherously with the Wives of their youths: Now how this was, although it be not so plain, yet it seems probable it was, by having of other lovers, and growing wearie of

their own, and so a pretending some fault in them, to the end to put them away : Well saith God in the 16 Verse, *The Lord God of Israel hateth this treachery of yours in seeking other lovers and being weary of your own wives put them away.* But on the other side, if your reading should be admitted, what a preposterous sense would here be ; as if God should say, Oh you deceitfull Jewes, you treacherously deal with your own Wives, I pray let me heare no more of this treacherie ; but this I command you, if you would faine be rid of them, do but hate them and then put them away, and then you are at libertie : And so God to prevent treacherie against mens wives, should command the greatest treacherie that can be devised.

In the prosecution of this reason you are pleased to say, *It is a lesse breach of wedlock to part with quiet consent betimes, then still to prophane that mystery of joy with a polluting sadnesse.*

Answe.

Mysterie of joy, what language is this ? is mariage now a Sacrament signifying joy ? this I never heard of before : the Papists indeed make it a Sacrament, but not of joy, and yet I doubt they can say more for their opinion then you for yours.

But how a lesse breach of wedlock ? is not wedlock quite broke by your divorce, though it should be with consent : but I am sure it is not quite broke by living sad and pensive lives ; and yet their duties are to amend their faults which are the occasion of the sad living, and not to be separated from one anothers persons.

And whereas you say, *It is not the outward continuance of marriage which keeps the covenant of marriage whole, but whosoever doth most according to peace and love, whether in marriage or divorce, he breaks marriage least.*

Answe.

We answer : this is a wilde, mad, and frantick divinitie, just like to the opinions of the Maids of Algate : Oh say they, we live in Christ, and Christ doth all for us ; we are Christed with Christ and Godded with God, and at the same time we sin here, we joynd to Christ do justice in him, for our life is hid with God in Christ. So you, what, tell you of bearing the infirmities of your Wife, and so fulfill the law of Christ, and of giving honour to her as the weaker vessell : why you can do this when you have put her away, you do all in love and peace, you keep these Commandements

Commandements well enough. Fic, fic, blush for shame, and publish no more of this loose Divinitie. But I would ask you a question or two.

May a man keep and maintaine that love which is required between married persons towards her who was his Wife, but now is divorced from him. If not, why say you in effect, if there be but peace and love mariage is kept well enough, either by continuing in mariage or by divorce. If he may maintain that love to her that is divorced, this is just fast and loose, marry and hate, divorce and love: I will hate her now she is my Wife, but love her when my Concubine: So, so, you teach us good courteous Doctrine.

1 *Quest.*

I ask you, whether mariage may continue after Divorce, if not, why say you in effect, that the mariage covenant is better kept by Divorce, so there be but love and peace, then by continuance in the sad companie of mariage. I grant according to the lawes of the kingdome there is a Divorce only *à mensa & thoro*, yet I believe they hardly allow that manifestation of love to each other which the covenant of mariage requires.

2 *Quest.*

But let us see, have you any Scripture for this your new Gospel: yea, enough, say you, often repeated: yea, what is, that? The words of *Paul* forsooth, *Love only is the fulfilling of every commandement.*

You must remember you put in the word only, and so adde to the Scripture. But well it is true, the Scripture doth say, *love is the fulfilling of the law*, and so by consequence of every Commandement: but how this will make for your purpose I cannot yet possibly see. Sure I am *Paul* never intended to be a Patron of all injustice and injurie to be committed, under a fained pretence of keeping the same Commandements they broke, by a secret unknown love in their hearts. Its true indeed, he that doth unfeinedly love his Neighbour, he will honour his Parents, not commit murther, nor by adulterie defile his Neighbours Wife, nor steale his goods; this is *Pauls* Doctrine. But *Paul* never taught, that a man might despise his Parents, murther, steale, and commit adulterie, and yet with a pretence of the grace of love earnestly burning in his heart, say he hath kept all the Commandements: No more doth he suffer a man to hate and put away

Ans.

his Wife with strife and variance, and tell him by the love and peace he had in his heart towards her, he had kept the Command of mariage unpolluted. *Pauls* intent in urging us so often with the dutie of love is, to put us in minde not to content our selves with the bare performance of duties to our Neighbour, without Christian love to their persons, he sayes 1 *Cor.* 13.2. *If I give all my goods to the poore, and yet have no love, it profiteth not, &c.* But he never intended men should gape altogether upon this generall precept of love, and stick there, for *Paul* knew that would deceive thousands: therefore in the same place he descends to particulars, and thinks it not enough to bid them to love one another, but he bids to pay tribute to whom tribute belongs, and so keep the fifth Commandement: that they should owe nothing to man, and so keep the eight Commandement: *To walk honestly as in the day time, not in chambring and wantonnesse,* and so break the seventh Commandement; not in strife and envying, and so break the sixth Commandement: (this I speak according to the ordinary received opinion of ranking duties under each commandement, though I could never yet see how these duties can so well be brought in as being required in the 10 Commandements in a proper sense so to speak: its fit every Scripture should have its own weight and authority.) But to our purpose; as *Paul* is thus particular with the Romans, notwithstanding his generall precept of love; so if you will here bring in that love which is commanded between Husband and Wife, *Paul* means you shall expresse it, by covering or passing by a multitude of her faults, and by seeking to heale her errours; and by your meek, wise, and godly conversation towards her, labour to win her to God, and your self, and not most inhumanely hate her and put her away, and still say, you keepe the command of love. Thus of your fourth Argument.

5 Arg.

The effect of your fifth Argument is, *That as the Priests of old were not to be long in sorrow, to the end they might execute their Priesthood rightly: So Christians now being Priests to God, dedicate to his service, they ought not by trouble and vexation of a disagreeing Wife to be hindred from serving God, but rather by divorce put her away, and so procure liberty to serve God.*

Answ.

This Argument is far fetched, yet is it not good for Ladies,

nor

nor scarce deserves any answer : but we tell you, most things concerning the priests were typicall, do you shew this to be the morall of this under the Gospel, that men might put away their Wives if they were cause of continuall heavinesse to them : how think you ? might not many poor men by the same reason, who are by the providence of God compelled to labour, and so are hindred much from the cheerefull serving God in the things of his worship, which others have libertie in : may they not lawfully now leave their honest labour and fall to plunder or steal one hour or two in a day, and serve God cheerefully the rest ? Why not, as well as when a man is by the providence of God married to a yoke-fellow, which is in divers things cause of grief and vexation to him, therefore he may now break all bonds of law and providence, and under a pretence of serving God chearfully, he may unchristianly thrust his Wife out of doores with a bare Bill of Divorce in her hand to seek her living. For the rest of our discourse in this Division concerning divorce from Hereticks, we shall passe it over as nothing to our purpose, and so passe to your sixth Argument, the effect of which is.

That mariage which nature it selfe teacheth to be unlawfull, that may be destroyed or dissolved by divorce. But the mariage of persons of contrary mindes & dispositions, nature teacheth to be unlawfull. Ergo, 6 Arg.

For the present we agree to the proposition, that such mariages as Nature it self teacheth to be unlawfull, may be dissolved by divorce. *Answ.*

But for the second part, that Nature teacheth such mariages to be unlawfull, as are made betwixt persons who are of a contrarie minde or disposition, this we utterly denie : and look for your proofs to the contrarie.

Well, you want not proofs, for you say, *Moses teacheth the Jewes that they should not sow their Vineyards with divers seeds, nor plough with an Oxe and an Asse together.*

Ho brave stuffe ! but goe on ; *Moses* teacheth so indeed : but how will you make this last to fit your shooc ?

This you will do well enough, but how ? *By following the example of Pauls reasoning,* say yoy. Well, lets see whether *Paul* or you are the best Logician. *Paul* reasons ; doth God take care for Oxen and Asses how ill they yoke together, or is it spoke altogether

ther for our sake? for our sakes doubtlesse: thus you would have *Paul* to reason for you: but the truth is, *Paul* doth reason thus, but it is in another case, the place is, 1 *Cor.* 9. *Paul* reasons thus; we that bestow our labour in preaching the Gospel, ought to be maintained thereby: and he proves it by familiar examples, that every one ought to be maintained by that which he takes paines in: as the Wayfaring man by travelling, the Vinedresser by planting, the Shepheard by looking to his flock; all these eat the fruit of their labour; and to put it out of doubt, *Paul* cites the Law of *Moses*, proving that not only Men, but even Beasts ought to eat the fruits of their labour, for it saith, *Thou shalt not muzzle the mouth of the Oxe which treads out the corne.* Well, *Paul* goes on in his reasoning, lest any idle pated fellow should answer and say; *Paul*, what makes this for you, I hope you are no Oxe, neither do you tread out the corne. No, sayes *Paul*, that's true; but the force of my Argument is this, That God by *Moses* did not only intend in that speech, that Oxen should be fed, but it was with reference to other cases among the rest even for us Ministers of the Gospel, that we should not take pains in the Gospel, but should also be maintained thereby, as well as Oxen and other mean Callings are maintained by their labour: lo this is *Pauls* reasoning, and it is impregnable Logick: let's see how yours agrees. *Moses* tels the Jewes they should not plough with an Oxe and an Asse together, nor sow their field with divers seeds; *Ergo*, there being some other sense in this then meerly to take care for Oxen, &c. it will follow from hence, that it is a foule incongruity and a great violence to the reverent secret of Nature, to force a mixture of mindes that cannot unite, and to sow the furrow of mans nativitie with seed of two incoherent and incombining dispositions. Is this your reasoning like *Pauls*, as you promised: sure *Paul* would be ashamed to reason thus.

For although we believe there may be some typicall signification of that of *Moses*, yet that it should be yours is ridiculous. But you say, *Paul* 2 *Cor.* 6. alludes to that of *Moses*, and applies it to mis-yoking in mariage, as say you by the Greek word is evident.

To this we answer; that it may be likely both by the Greek word and English also, that *Paul* alludes to that in *Deuteronomy*. Yet that he applies it to mariage with Infidels you cannot prove, but

but rather to all needlesse conversation, but especially of companying with them in their service of Idols.

But suppose he did applie it to mariage with Infidels, and forbade it; yet you see after mariage is perfected and consummated, he will by no meanes allow of a Divorce if the Wife be but so much as content to live with her Husband, as was shewed upon 1 Cor. 7. And so this no waies makes for your purpose.

Now for that reverent expression of yours, *That it is a foule incongruity, and a great violence to the reverent secret of Nature, to force a mixture of mindes which cannot unite, and to sow the furrow of mans nativitie with the seed of two incoherent and incombining dispositions.*

This Court complement, so neatly and modestly drest, I believe deserves the pains of the best Ladie at Court to learn it. For answer to it being but a complement, for your forcing of a mixture of mindes that cannot unite; I know no bodie by force or fair means intends any such mixture in mariage: mindes are not capable of mixing but only agreeing and uniting; indeed you talk much of fit conversing soules, whether you meet by mixture or otherwise, it matters not, the language is too sublime and Angelicall for mortall creatures to comprehend it. And for your other phrase of *a great violence to the reverent secret of nature by sowing the furrow of mans nativitie, with the seed of two incoherent and incombining dispositions.*

Ans.

This frothie discourse, were it not sugred over with a little neat language, would appear so immeritous and undeserving, so contrary to all humane learning, yea, truth and common experience it self, that all that read it must needs count it worthie to be burnt by the Hangman.

For who ever thought before you, that the reverent secret of Nature, or the furrow of mans nativitie (so there was lawfull mariage preceded) might not be sowed by the seeds of such as are of different or uncombining disposition, if any such there be, without violence or foul incongruitie? If any think otherwise as you it seems doe, give advice that a Petition may be drawn, to have a Committee in every Countie of the Kingdome who shall carefully see to, and severely restraints the mariage of any two Men or Maids who differ in constitution, complexion, hair,

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countenance,

countenance, or in disposition, lest this reverent secret of Nature be defiled and violated.

7 Arg.

Your seventh Argument is, *The Canon law and Divines allow a Divorce where one of the parties conspires the death of the other: but sometimes through disagreement of dispositions, by a sad pensiveness the life of one of the parties at least, is brought into danger. Ergo it seems a divorce ought in the latter case to be tolerated.*

To this I answer three things.

1. Answ.

1. For the opinion of the Canon law, the whole bodie of it is not of your minde, for *Nichol. 1. de matrim. Can. 6.* is contrarie, *quicquid mulier contra te cogitaverit, non est excepta causa fornicationis rejicienda.* Whatsoever thy Wife conspires or plots against thee, there is no other cause of putting her away but fornication.

2. Answ.

The case is not the like, betwixt the conspiring of one partie to kill the other, and your case: for where the one partie conspires to take away the life of the other, and the conspiracy continues, there the offender doth implicitly at least act a Divorce; and though it should be true, that the partie grieved may in this case sue a Divorce, yet will it not follow in your case, that because a man may seek divorce from her who seeks his life, to the end to save his life, which Nature teacheth: therefore for disagreement of disposition, causing sadness, and wherein they are both actors, if not equals, there the Husband may will, she will she, put her away; this is just a taking advantage of our own faults and corruptions, to releafe us from our duties.

3. Answ.

But thirdly it would seem that there is no such cause meerly in Nature properly so called, that may cause such griefe as is destructive to the life: and if the cause be not in Nature, but in corruption, in pride, haughtinesse, sullenness, &c. let them amend their faults, repress their pride and sullenness, or else let them if they think best, die of the sullen disease, let them try who will pittie them.

8. Arg.

The effect of your eighth Argument is this:

Those who are destitute of all marriage gifts, but only firsnesse of body, they have no calling to marry, and consequently if married ought to be divorced: but such some are. Ergo,

Answ.

Briefly to this simple Argument, quite besides that which ought to be the scope of your Book, for what is here to contradict,

riety of dispositions, now it is a disability to all married duties : This wavering & shaking in your opinion is not fit to be answered : for if it be a Lunatick *non compos mentis*, without any wit, a naturall Foole, which cannot count the daies in the week, or tell twenty, or measure a yard of cloath; you need not to inveigh against them, and you can seldome shew such an example: if Guardians doe sometime marrie such let the Lawyers alone with it, they know how to relieve the suffering partie well enough.

Marriage is a humane society, and so ought to have the consent of the minde; but if the minde cannot enjoy that in marriage which is may reasonably desire, it is no humane society. Ergo. 9 Arg.

The consent of the minde ought to be had in marriage, or else it will hardly become a humane societie: but that after marriage the mindes of the Husband and Wife must in all things agree, or else the marriage becomes no humane societie, is a new principle unheard of till now, and so I leave it. As for the discourse of *Deut. 24.1.* and Christs exposition to the Pharisees, we have spoken of it in answer to your second Argument. *Answ.*

Now a word to your last Argument and so farewell.

Every law is made for some good, which good may be attained without a greater inconvenience: but such is not the law that prohibits Divorce for disagreements of mindes and dispositions: Ergo, it is not a just law. 10 Arg.

We denie this your Argument, and say, that there are many laws which are made for good, and yet that good is not attainable through the defaults of the partie, but a greater inconvenience followes, and yet are indeed still just lawes. *Answ.*

I will give you two or three instances in our lawes of England. It is the righteous and just law of England, that every one shall peaceably enjoy his estate in lands or otherwise, according to the goodnesse and latitude of his title: and I hope none will denie this to be a just law: yet see by the default of the partie how this may be evaded, and he fall into great inconvenience.

And so if a man having fee-simple in lands, and yet will take a lease from another of the same lands, this shall be an Estoppell to him in an Assise to recover his own land. *ter. leg. estop.*

. So if a Daughter *mulier* will sue livery of lands with her sister who is a Bastard, she shall not avoid it after by saying her sister was a Bastard not *mulier*. G 2 So

So if a man had a rent, liberties, Common, &c. by prescription, and after takes a grant of the same from the King by Patent, that shall determine this prescription. 32 H. 8. Bro. tit. Estop. 200.

So 37 H. 8. Bro. Estop. 218. If two joynt tenants are, which hold of the King in capite, and the one release to the other in fee, and after both respite homage in the Exchequer, the other hath by this gained his moitie againe against the other, without any valuable considerations, by the default of the other.

So it is a just law in England, that no man shall be unjustly charged or taxed contrarie to the right, and what he is bound to doe.

Yet a man by his own fault may charge himselfe, or doe such things as the law will compell him to be charged, where before he was free.

For example. If a Towneship or a Corporation are bound to repaire or maintaine a Causey or a Bridge, and a private man where he is not bound will repaire this Bridge or Causey, time beyond the memorie of man, he shall then be compelled to repaire it for ever by the Law, and at the first he was compellable.

The end of citing these cases is to shew you the weaknesse of your reason against the law of England which prohibits Divorce, for your pretended contrarietie of minde. For though it should be granted this law of prohibition of Divorce, the end of it could not be attained without a greater inconvenience: yet this inconvenience comming, arising and growing from the fault of the parties, and not from the Law; this Law of prohibiting Divorce shall remain (maugre the malice of all opposers) a just and a righteous law.

FINIS.



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